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1 TONY WEST
Assistant Attorney General
2 JOHN R. TYLER
Assistant Branch Director
3 ERIC B. BECKENHAUER, CSBN 237526
Trial Attorney

4 U.S. Department of Justice
5 Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
6 Washington, DC 20530
Telephone: (202) 514-3338
7 Facsimile: (202) 616-8470
E-mail: eric.beckenhauer@usdoj.gov

8 Attorneys for Defendants
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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 NATIONAL LAWYERS' GUILD SAN
14 FRANCISCO CHAPTER, et al.,

15 Plaintiffs,

16 v.

17 U.S. DEPARTMENT OF HOMELAND
18 SECURITY, et al.,

19 Defendants.
20 _____/

No. C 08-5137 RS

**JOINT STATUS REPORT
AND STIPULATION TO STAY
PROCEEDINGS; AND ~~PROPOSED~~
ORDER**

21 WHEREAS, in an effort to narrow the issues before the Court,

22 1. The parties have entered into a series of stipulations to stay proceedings since April
23 24, 2010, to allow Defendants to conduct secondary searches and process potentially responsive
24 records, and to allow the parties to confer in an effort to resolve Plaintiffs' claims without the
25 Court's intervention. On October 30, 2009, as a result of those negotiations, Plaintiffs stipulated that
26 they did not contest the adequacy of the searches performed by Defendants DHS, DHS-OIG, or
27 CIS, or the propriety of the withholdings made by DHS-OIG; accordingly, pursuant to Rule
28 41(a)(1)(A)(ii), the parties filed a stipulation of dismissal of this action with prejudice with respect

1 to those Defendants. Negotiations continued with respect to the remaining Defendants: CBP,
2 EOIR, and ICE. On February 2, 2010, the Court approved the parties' stipulation (a) to further stay
3 proceedings through and including April 30, 2010; and (b) to submit a joint report advising the
4 Court on the status of negotiations and processing, and/or a stipulation proposing a schedule to
5 govern further proceedings, no later than April 30, 2010; and

6 2. CBP has provided Plaintiffs with a letter describing the scope of its search and a
7 preliminary, partial Vaughn index explaining the bases for its withholdings; Plaintiffs have
8 responded with several objections and/or requests for clarification; and the parties have continued
9 to confer to discuss the scope of CBP's search and the propriety of its withholdings. Plaintiffs are
10 not yet prepared to stipulate to the adequacy of CBP's search or the propriety of its withholdings;
11 however, further negotiation may eliminate the need for judicial resolution of these issues; and

12 3. EOIR has provided Plaintiffs with a letter describing the scope of its search and with
13 preliminary, partial Vaughn indexes explaining the bases for its withholdings. In an attempt to
14 further narrow the issues before the Court, and perhaps to resolve Plaintiffs' claims without the
15 Court's intervention, the parties have agreed that:

16 a. By May 15, 2010, Plaintiffs will respond with a letter that either (i) stipulates
17 that Plaintiffs do not contest the adequacy of the search; or (ii) states that
18 Plaintiffs believe that the search was inadequate, and identifies any
19 objection(s) with specificity; and

20 b. By June 30, 2010, Plaintiffs will respond with a letter that, with respect to
21 each of the withholdings explained in the preliminary, partial Vaughn
22 indexes, either (i) stipulates that Plaintiffs do not contest the propriety of the
23 withholding; or (ii) states that Plaintiffs believe that the withholding was
24 improper, and identifies their objection(s) with specificity; and

25 c. By August 15, 2010, the parties will confer to determine how to proceed with
26 Plaintiffs' claims challenging the adequacy of EOIR's search and the
27 propriety of its withholdings; and
28

1 4. ICE has confirmed that its processing of the approximately 24,000 pages of
2 potentially responsive records located during its secondary search is complete. In an attempt to
3 further narrow the issues before the Court, and perhaps to resolve Plaintiffs' claims without the
4 Court's intervention, the parties have agreed that:

- 5 a. By June 30, 2010, ICE will provide Plaintiffs with a letter that describes the
6 scope of its search for responsive records;
- 7 b. By July 30, 2010, Plaintiffs will respond with a letter that either (i) stipulates
8 that Plaintiffs do not contest the adequacy of the search; or (ii) states that
9 Plaintiffs believe that the search was inadequate, and identifies any
10 objection(s) with specificity; and
- 11 c. By August 15, 2010, the parties will confer in an effort to determine how to
12 proceed with respect to Plaintiffs' claims challenging the adequacy of ICE's
13 search; and

14 5. Further, with respect to records that Defendant ICE has withheld as exempt from
15 disclosure:

- 16 a. By letter dated April 1, 2010, Plaintiffs identified those records that they
17 contend ICE improperly withheld (in whole or in part) under the FOIA and
18 for which Plaintiffs request a Vaughn index; and
- 19 b. Plaintiffs have stipulated that they do not contest the propriety of the
20 withholdings in any other record that ICE has produced; and
- 21 c. The parties have agreed that, by May 31, 2010, ICE will provide Plaintiffs
22 with a preliminary, partial Vaughn index explaining the bases for the
23 withholdings that Plaintiffs contest; and
- 24 d. By July 30, 2010, Plaintiffs will respond with a letter that, with respect to
25 each of the withholdings explained in the preliminary, partial Vaughn index,
26 either (i) stipulates that Plaintiffs do not contest the propriety of the
27 withholding; or (ii) states that Plaintiffs believe that the withholding was
28 improper, and identifies their objection(s) with specificity; and

1 e. By August 15, the parties will confer to determine how to proceed with
2 Plaintiffs' claims challenging the propriety of ICE's withholdings; and

3 WHEREAS it would minimize litigation costs and conserve judicial resources to stay
4 further proceedings in this case to permit the above-mentioned negotiations to continue, and to
5 permit the parties to confer further as described above;

6 IT IS HEREBY AGREED AND STIPULATED by and between the parties, through
7 undersigned counsel, subject to the approval of the Court, that:

- 8 1. Further proceedings in this case are stayed for a period of approximately 4 months
9 through and including August 31, 2010; and
10 2. No later than August 31, 2010, the parties shall submit a joint report advising the
11 Court on the status of the above-mentioned negotiations and processing and/or a
12 stipulation proposing a schedule to govern further proceedings.

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1 Dated: April 30, 2010

2 Respectfully submitted,

3 /s/ Jennifer Lee Koh
JENNIFER LEE KOH
4 JAYASHRI SRIKANTIAH
IMMIGRANTS' RIGHTS CLINIC
5 STANFORD LAW SCHOOL
559 Nathan Abbott Way
6 Stanford, CA 94305
Tel: (650) 724-2442
7 Fax: (650) 723-4426

8 LINTON JOAQUIN
KAREN TUMLIN
9 NATIONAL IMMIGRATION
LAW CENTER
10 3435 Wilshire Boulevard, Suite 2850
Los Angeles, CA 90010
11 Tel: (213) 639-3900
Fax: (213) 639-3911

12 JARED KOPEL
13 LISA A. DAVIS
DOMINIQUE-CHANTALE ALEPIN
14 WILSON SONSINI GOODRICH &
ROSATI
15 Professional Corporation
650 Page Mill Road
16 Palo Alto, CA 94304-1050
Tel: (650) 493-9300
17 Fax: (650) 565-5100

18 Attorneys for Plaintiffs

TONY WEST
Assistant Attorney General

JOHN R. TYLER
Assistant Branch Director

/s/ Eric B. Beckenhauer
ERIC B. BECKENHAUER, CSBN 237526
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave. NW
Washington, DC 20530
Telephone: (202) 514-3338
Facsimile: (202) 616-8470
E-mail: eric.beckenhauer@usdoj.gov

Attorneys for Defendants

19 **SIGNATURE ATTESTATION**

20 In accordance with General Order 45(X), I hereby attest that I have obtained Jennifer Lee
Koh's concurrence in the filing of this document.

21 /s/ Eric B. Beckenhauer
22 ERIC B. BECKENHAUER

23
24 **[PROPOSED] ORDER**

25 Pursuant to stipulation, **IT IS SO ORDERED.**

26
27 Dated: 5/3/10


28 RICHARD SEEBORG
United States District Judge